

APOSTOLOS PALIOMBEIS

IBLA 82-516

Decided May 19, 1982

Appeal from decision of California State Office, Bureau of Land Management, denying reinstatement of oil and gas lease CA 222.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless the rental payment is tendered at the proper office within 20 days of the due date.

APPEARANCES: Apostolos Paliombeis, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Apostolos Paliombeis appeals the California State Office, Bureau of Land Management (BLM), decision of February 2, 1982, which gave notice of the termination of oil and gas lease CA 222 for nonpayment of annual rental due January 2, 1981, and which denied reinstatement of the lease. The rental payment was tendered to BLM on January 23, 1981.

Appellant states the reason for the late payment of the rental was his emergency trip to Greece because of the serious illness of his mother. His

brother had been instructed to make the rental payment, but because the brother lacked information as to the serial number of the lease, the payment was not made until after his return.

[1] The pertinent statute and regulation, 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c), specify that an oil and gas lease terminated by operation of law for failure to pay the annual rental on time may be reinstated if, among other things, the late payment is either justifiable or not due to lack of reasonable diligence. "Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2). Mailing or delivery of the payment after it is due does not meet this requirement. Apostolos Paliombeis, 35 IBLA 180 (1978); Apostolos Paliombeis, 30 IBLA 153 (1977). The responsibility for payment of rental for an oil and gas lease is solely on the lessee. Where such payment is not timely made because of a failure of the designated person to perform timely, the consequence for the late payment must be borne by the lessee himself.

[2] A petition for reinstatement may be considered if, and only if, the payment is made or tendered within 20 days of the anniversary date. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c). The payment for oil and gas lease CA 222 was due on or before January 2, 1981. Payment was not tendered until January 23, 1981, more than 20 days after the anniversary date of January 1, 1981. Inasmuch as no payment was tendered within the 20-day period allowed by statute, we are precluded from giving favorable treatment to the petition for reinstatement of oil and gas lease CA 222.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

